

## **COMMONLY ASKED QUESTIONS ABOUT CONTESTED CASE HEARINGS IN THE INSURANCE DIVISION**

**NOTE:** *The following information is provided as a general overview of contested case hearings. It does not constitute legal advice. Contested case hearings are conducted in accordance with Iowa law [Iowa Code chapter 17A] and the specific rules of the Insurance Division.*

### **What is a contested case hearing?**

When the Insurance Division has taken or could take some adverse action against you, you may be entitled to a contested case hearing to challenge the alleged facts on which that action is based. The Insurance Division, for example, may revoke, suspend, or refuse to issue an insurance producer license, order you to cease and desist certain acts or practices, or impose certain penalties for something it says you have done wrong. The hearing is your opportunity to state why you disagree with the facts alleged and to present evidence through witnesses and documents that support your position. After the hearing, the Insurance Commissioner will decide whether to accept, modify, or reject any previous decision made by the Insurance Division in the action. Iowa Code § 17A.2(5).

### **How do I get a hearing?**

If you are entitled to a contested case hearing, a hearing may be scheduled in several different ways. The Insurance Division may send a notice to you. This notice of hearing will provide specific reference to the statutes and rules involved. The notice will include a date, time, and place for the hearing and will tell you if the hearing will be held in person, by videoconference or by telephone conference. Or the Insurance Division may send a notice to you stating that you must request a hearing within a certain period of time to contest a decision made by the Insurance Division.

You may, within 20 days of the date of the notice was mailed, file a written request that your case be transferred to an administrative law judge assigned by the Iowa Department of Inspections and Appeals. The Insurance Commissioner will determine whether your request to transfer the case to an administrative law judge should be granted or if the case should remain before the Commissioner.

If you have received a denial of your application for licensure or a summary cease and desist order, you can request a hearing by filing a written request with the Insurance Division. The deadline to request a hearing will appear in the Insurance Division's notice or order, but it is often 30 days from the date of mailing. Usually, your request should include your name and address, a statement of why you disagree with the facts alleged, the date, and your signature. (See further instructions below.) You should keep a copy of your written request for your records. To ensure that you get a hearing, you must postmark or deliver the request to the agency by the Insurance Division's deadline in the notice.

### **What do I need to do before a hearing?**

Most importantly, if the Insurance Division staff has filed a statement of charges against you, you are required to file an answer to the charges within 20 days of the date the notice of hearing was mailed. If you fail to file an answer within 20 days, you may be found to be in default and lose your opportunity for a hearing.

### **How do I file a document?**

To file a document, you can personally deliver, email to the email address provided below, or mail your document to the Insurance Division.

If you choose to email your document, you can file your document with the Insurance Division by sending an email to [enforcement.filings@iid.iowa.gov](mailto:enforcement.filings@iid.iowa.gov). You should include the Division Case number in the subject of the email and attach your document as a PDF.

If you choose to mail your document, address it to the following:

Iowa Insurance Division  
Enforcement Filing Clerk  
1963 Bell Ave, Suite 100  
Des Moines, Iowa 50315

A proof of mailing is required to determine the date the document was mailed for filing purposes and includes items listed in Iowa Administrative Code rule 191—3.12(5). You can choose to add tracking to your mailing to ensure you know when it reaches the Insurance Division, but this is not required.

The following information, examples provided, should be included at the top of the document you want to file:

Case heading: "Before the Iowa Insurance Commissioner"

Case name: "In the Matter of John Doe"

Case number: "Division Case No. 00000"

Document title: "Answer" "Motion to Continue"

Additionally, all documents must be signed by you, or your attorney, in order to be filed. A file-stamped copy of your document will be sent to your email address, if provided. You will also be provided a paper copy by mail, if you request one, or if the Division does not have an email address.

### **How do I request an extension of a deadline or a continuance of a hearing date?**

Only the Iowa Insurance Commissioner (or presiding officer if different) can grant a deadline extension or the continuance of a hearing date. If you need additional time to prepare an answer, respond to a motion, or if you have a conflict on a scheduled hearing date, you should prepare a document in writing that includes the following information:

1. What deadline or hearing date are you requesting an extension or continuance of?
2. Why do you need an extension?
3. How long of an extension are you requesting?
4. Any other information that will help the Commissioner make an informed decision.

Please note that the Commissioner must grant your request by Order before a deadline is moved. If no Order is issued, the deadline remains. Therefore, it is beneficial to you to request a deadline extension as soon as you think you may need one.

Certain timeframes may apply to the extension of deadlines. A motion to continue must be filed 14 days prior to the hearing. Iowa Administrative Code rule 191—3.17. If you miss this deadline, you can still request an extension and the Commissioner may consider your request.

### **How should I prepare for the hearing?**

The notice you receive will refer to the statutes (Iowa Code) and rules (Iowa Administrative Code) that apply to your case. You should review those statutes and rules before the hearing. The Iowa Code and the Iowa Administrative Code are available on the Legislature's website: [legis.iowa.gov](http://legis.iowa.gov). Iowa Code § 17A.12.

It would be helpful to write down the important facts and the points you want to present at the hearing. As part of the notice of hearing you receive, a prehearing conference date will be included. The reasons for a prehearing conference may include: 1) to set a schedule of activities to occur before the hearing; 2) to narrow the issues that are in dispute; and 3) to allow the parties a chance to settle or resolve the case without the need to have a hearing. If you intend to call witnesses or present evidence at the hearing, you will need to file a witness and exhibit list by the prehearing conference date, listing the witnesses and exhibits you expect to use at hearing. You should also get in touch with the attorney representing the Insurance Division in order to exchange exhibits prior to the prehearing conference. If you fail to list specific witnesses or exhibits prior to hearing, those witnesses or exhibits may be excluded at hearing. If you want a person with knowledge about your case to speak in support of your position, you need to list them as a witness and ask that person to attend the hearing. You should organize and bring with you any and all documents you listed on your exhibit list and intend to submit to the Insurance Commissioner to consider. If you want to speak on your own behalf, you should be ready to make statements under oath. Remember the hearing is your opportunity to present your side of the case, so you should bring the witnesses and exhibits that are necessary to tell your story.

The Department of Inspection and Appeals also has links to statutes, rules, and other resources. <https://dia.iowa.gov/administrative-hearings/legal-resources/agency-specific-resources/insurance-division-resources>

### **What if a witness refuses to attend the hearing?**

You are entitled to have witnesses attend the hearing who know about facts that would help your case. If necessary, you can ask the Insurance Commissioner to issue a subpoena to order the witness to attend. Generally, you must present a written request for a subpoena at least 10 days before the hearing. However, you will probably want to allow more time since the subpoena will have to be mailed to you for service on the witness, unless you pick it up. Please note that you are responsible for serving the subpoena on the person that you want to attend the hearing and for paying any witness fees or mileage expenses claimed by the witness. Iowa Code § 17A.13(1); Iowa Code sections 622.69; 622.74. If your witnesses are unable to attend the hearing in person, you must file a timely notice that your witnesses will attend the hearing by videoconference or telephone.

### **What is the role of the Insurance Commissioner?**

The Insurance Commissioner is appointed by the Governor to administer the laws and regulations of the business of insurance, securities, and other regulated industries. In most contested cases, the Insurance Commissioner will be the presiding officer who will hear the contested case matter. If the Insurance Commissioner is not the presiding officer in a case, in nearly all circumstances, he will still be responsible for issuing a final decision in contested cases after a hearing of all of the evidence presented by the parties. You cannot call the Insurance Commissioner or the Insurance Division staff for legal advice. The Insurance Commissioner, or presiding officer if different, is generally prohibited from communicating with any person or any party about the factual or legal

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issues in your case, unless all parties are first provided notice and an opportunity to participate and respond. For this reason, anyone who sends written information to the Insurance Commissioner concerning the contested case must also send the same information to the attorney representing the Insurance Division in the contested case. Iowa Code § 17A.17.

### **What if I am unable to attend a hearing?**

If you have a good reason for not being able to attend a hearing before the Insurance Commissioner, you must immediately ask in writing for the Insurance Commissioner to continue the hearing to another date. You will need to state the specific reasons for the continuance and sign the statement. You will also need to send a copy of your request to the attorney representing the Insurance Division. Upon receiving your request, the presiding officer will decide whether or not it is appropriate to continue the hearing. If you fail to attend the hearing without requesting and getting a new hearing date, the case may be decided against you even if you do not attend.

### **Do I need to hire a lawyer?**

You may hire a lawyer to represent you at your own expense or you may choose to represent yourself. Depending on your financial resources and the type of appeal, you may be able to receive legal representation through Iowa Legal Aid.

In many cases, it will help you to hire a lawyer to represent you through the process. If you choose to obtain a lawyer, your lawyer must either be licensed to practice in Iowa or follow Iowa Court Rule 31.14 regarding pro hac vice applications, which requires them to obtain local counsel. Your lawyer must file a notice of appearance with the Iowa Insurance Division pursuant to the filing instructions above.

The Department of Inspection and Appeals has guidance on obtaining legal advice.

<https://dia.iowa.gov/administrative-hearings/obtaining-legal-advice>

### **Can I find out in advance what witnesses and documents will be offered against me?**

You can find out what evidence will be presented at the hearing in several different ways. You may informally ask the attorney representing the Insurance Division that is taking the action against you for copies of any proposed exhibits the Division anticipates offering as evidence at hearing. Alternatively, you may use “discovery.” Discovery can be very formal. These rules are technical and you may want the assistance of a lawyer to utilize discovery. Generally, discovery allows you to obtain relevant information about your case through the use of written questions, requests for documents, and taking statements of opposing witnesses under oath in advance of the hearing. Iowa Code § 17A.13; Iowa Administrative Code rule 191—3.13

Additionally, as mentioned above, you and the Division are required to exchange a list of witnesses and documents to be used at the hearing by the prehearing conference date.

### **Will the hearing be recorded?**

Yes, the hearing will be recorded. The Insurance Division often records hearings electronically, and it may use a court reporter to transcribe the hearings during or after the hearing. You may ask the Insurance Division how it will record your hearing. If the Insurance Division does not intend to arrange for a court reporter to transcribe the hearing, you can arrange for a court reporter; however, if you do, you will have to pay the court reporter yourself. Iowa Code § 17A.12(7).

**Can anyone attend the hearing?**

Generally, hearings are open to the public and anyone may attend. The hearing may be closed to the public only if some specific provision of law allows the hearing to be closed. Sometimes the witnesses must wait outside the hearing room until they are called to testify. This prevents each witness from hearing what the other witnesses have said. Iowa Code § 17A.12(7).

**Can I submit a written letter from a witness who cannot attend the hearing?**

Generally, yes. The Insurance Commissioner may allow you to submit a written letter at the hearing even if a written letter would not be admissible in a courtroom. A hearing before the Insurance Commissioner operates under different rules than a courtroom trial and this type of evidence, sometimes referred to as “hearsay” is generally admissible in an administrative hearing. Although the rule on hearsay and exceptions to the hearsay rule can be complex, “hearsay” is an out-of-court statement offered to prove the truth of the information claimed in the statement.

A letter, or other hearsay, may be given less weight by the Insurance Commissioner than other kinds of evidence. A letter alone, for example, may not be given as much weight by the Insurance Commissioner as the sworn testimony of a live witness who can be questioned during the hearing. Because live witnesses are available to be questioned, testimony from live witnesses usually carries the most weight. Public documents carry considerable weight due to their official nature. A statement by a person that has been signed before a notary public would carry more weight than a letter that has been signed, but not notarized. Iowa Code § 17A.14.

**Will I be allowed to ask questions of the witnesses for the other side?**

Yes, you are permitted to ask questions of the opposing witnesses who testify against you. Similarly, the attorney representing the Insurance Division will be permitted to ask questions of witnesses who testify on your behalf. In addition, the Insurance Commissioner may ask questions of any witness. Iowa Code § 17A.14.

**What if my witness does not show up? Can I call the witness another day? Or can I offer a written letter at a later time?**

If your witness does not show up, you can ask the Insurance Commissioner, or presiding officer if different, to continue the hearing to another day. You could ask the Insurance Commissioner to “hold the record open” to allow you to submit a written statement by the witness after the hearing. It is up to the Insurance Commissioner, or presiding officer to decide whether your request for a continuance or to hold the record open should be granted. If the record is held open, you will be given a deadline by which to submit the letter or other documents.

**Can my witness testify at the hearing over the telephone or by videoconference?**

The Insurance Commissioner may allow a witness to testify over the telephone or by videoconference at the hearing, even if the hearing is held in-person. You need to tell the Insurance Commissioner and the attorney representing the Insurance Division at least 14 days before the hearing that you will have a witness by telephone or videoconference, so that the Insurance Commissioner can make arrangements. Iowa Administrative Code rule 191—3.8.

**Can my case be settled without a hearing?**

Yes, a case can be settled by the parties prior to the hearing. If you want to settle, you should contact the attorney representing the Insurance Division. Often that person is identified as having signed the Statement of Charges. Settlements must be approved by the Insurance Commissioner, so an agreement with the attorney representing the Insurance Division does not resolve the case unless and until the Insurance Commissioner approves the settlement you have reached by signing a Consent Order. Iowa Code § 17A.10.

**Who decides whether I win or lose at a hearing before the Insurance Commissioner?**

Whether the hearing is before the Insurance Commissioner, or presiding officer if different, the final agency decision will be made by the Insurance Commissioner and will be based on the law, the statements of the witnesses, and on the documents that were introduced at the hearing. Iowa Code § 17A.11(1).

**After the hearing is over, how will I find out what has been decided?**

Usually, you will receive a written decision through the mail or email that states the facts about the case and details your legal rights. This decision can be stated verbally by the Insurance Commissioner at the conclusion of the hearing while you are still present, but decisions are almost always written and mailed or emailed to the parties after the hearing. Iowa Code § 17A.16(1). All final decisions are also posted on the Division's website. Pursuant to Iowa Code §§ 22.13 and 17A.3(1)(e), government settlement agreements are public records.

**What if I don't like the decision?**

You have the right to appeal a decision. If the decision was issued by the Insurance Commissioner, you can ask the agency for a "rehearing" to change the decision. Once the agency has issued a final decision, you can appeal to district court. Pay very close attention to any deadlines in the agency's statutes or rules for an appeal to the agency or for rehearing. If you miss a deadline, you may be barred from any further appeals. You must appeal to district court within 30 days after issuance of the agency's final decision. Iowa Code §§ 17A.15, 17A.19.

**Who can I contact if I have questions regarding the information contained in this document?**

If, after reading the information provided below, you still have questions regarding a contested case, you can contact the Enforcement Bureau of the Iowa Insurance Division at (515) 654-6561. Please note: the Iowa Insurance Division and its staff does not represent you and cannot provide legal advice. However, staff is available to assist in answering questions regarding our procedures and rules relating to contested cases.